

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6746 of 2011 (O&M)
Date of Decision:11.02.2015

M/s Sundaram Finance Ltd.

....Appellant

Versus

Shri Gyaneshwar and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Vishal Gupta, Advocate for the appellant.

NAVITA SINGH, J.

1. As per order dated 8.2.2012, counsel for the appellant was to place on record some documents to depict that the court at Faridabad had territorial jurisdiction in the matter. On the next date, adjournment was sought. Thereafter, certain documents were placed on record and then it was submitted on 16.10.2012 that Arbitrator had been appointed and respondents had appeared before that Arbitrator. As per the order under challenge, the petition filed by the appellant was dismissed on the ground that court at Faridabad did not have the territorial jurisdiction.

2. Counsel for the appellant argued that as per the view taken by the Supreme Court in Harshad Chiman Lal Modi Vs. D.L.F. Universal Ltd. and another AIR 2005 Supreme Court 4446 (1), the territorial jurisdiction would be where the cause of action arose. He contended that in the present case, the main limb of the deal between the parties regarding loan etc. was executed at Faridabad and, therefore, the court in that city had the jurisdiction. The respondents also belonged to District Faridabad while the branch office of the Company was also situated there.

3. The reported case referred to above, however, regarding jurisdiction in respect of immovable property in that case, the agreement of sale had been executed at Delhi whereas the property was situated within the State of Haryana i.e. at Gurgaon. The parties agreed that Delhi court alone had jurisdiction but that exclusion clause regarding jurisdiction of the court at Gurgaon was held to be illegal.

4. So far as the exclusion of jurisdiction of courts at a particular place by agreement is concerned, the parties do have a right to agree that in cases of dispute between them, courts at certain places would have exclusive jurisdiction. The use of the words like 'alone', 'only' and 'exclusive' would not be mandatory. The intent of the parties would have to be seen. It was so held by the Supreme Court in Swastik Gases Private Ltd. Vs. Indian Oil Corporation Ltd (2013) 9 Supreme Court Cases 32. In the said case, a clause was inserted in the agreement that the courts at Kolkata would have the jurisdiction and it was taken to mean that the parties excluded the jurisdiction of other courts.

5. However, in the case in hand, the facts are peculiar because in the agreement, it was simply mentioned that venue of arbitration proceedings would be at Chennai but nothing was mentioned about the court which would have the jurisdiction in case of other disputes. Here an application under Section 9 of the Arbitration and Conciliation Act (Act for short) was filed by the appellant. Such situation was not contemplated in the agreement.

6. The court passing the impugned order rejected the application of the appellant stating that the respondents were residents of District Palwal and, therefore, the courts at Faridabad had no jurisdiction. Section 20 of the Code of Civil Procedure (CPC) was mentioned by the court below in context with Section 9 of the Act, which defined the word 'court'.

7. 'Court' as defined in the Act, was a court having jurisdiction to decide the questions arising from the subject matter of the arbitration, if the same had been subject matter of a suit. In relation to suits pertaining to moveable properties, Section 20 CPC would apply according to which suits relating to such properties are to be instituted where the defendants reside or cause of action arose. Where the defendant/s in the suit resided or carried on business or personally worked for gain could be the place for filing such a suit.

8. Thus, a petition under Section 9 of the Act could be filed where the respondents ordinarily resided or worked for gain. In this case, they resided in District Palwal and, therefore, the courts at Palwal would have the jurisdiction.

9. It is not understandable as to why the court below did not return the petition to be presented before the appropriate Forum, though major part of the cause of action had arisen in Faridabad and the parties were residents of Palwal, which is now an independent District.

10. The appeal is allowed and it is held that the appellant would be at liberty to file a petition, if so required, under Section 9 of the Act within the territorial jurisdiction of the courts at Palwal.

(NAVITA SINGH)
JUDGE

11.02.2015
Ishwar

Whether to be referred to reporter: Yes